



Order Instituting Rulemaking to Advance)
Demand Flexibility Through Electric Rates)
)
)

Rulemaking 22-07-005
July 14, 2022

MOTION FOR PARTY STATUS OF A RESIDENTIAL CUSTOMER

April 17, 2023

Alexis K. Wodtke
6505 Harwood Ave.
Oakland, CA 94618

MOTION FOR PARTY STATUS OF A RESIDENTIAL CUSTOMER

I. INTRODUCTION

I, Alexis K. Wodtke, a residential customer of Pacific Gas & Electric Company, file this motion to become a party to R.22-07-005, Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates, in accordance with Sections 1.4(4) and 45.6 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure.

II. INTEREST IN THIS PROCEEDING

A. I am a customer of Pacific Gas & Electric Company and only recently heard, through the newspapers, that a Commission proceeding was taking place which would increase my electric rates. My interest in the proceeding is to keep that from happening.

B. As a customer of PG&E, I am interested in preventing residential block rates from being imposed on residential customers. It is understood that this proceeding is undertaken to implement AB-205 but that can only be done with compliance to Constitutional principles and reconciliation with California statutes requiring just, reasonable and non-discriminatory rates. The “views [I] intend to provide” are relevant to the proceeding as more fully explained in the Argument Section of this Motion.

III. NOTICE

Service of notices, orders, and other correspondence in this proceeding should be directed to me at the address set forth below:

Alexis K. Wodtke
6505 Harwood Ave.
Oakland, CA 94618
E-mail: dansmarin@gmail.com.

IV. Conclusion

My participation is permitted by Constitutional and statutory provisions governing ratemaking, as more fully explained in the Argument Section of this Motion. My participation in this proceeding will not prejudice any party. I am familiar with the procedures followed by the Commission and the prerequisites for filing documents in this proceeding because I previously practiced before this Commission. Therefore, I will not delay the schedule or broaden the scope of the issues in the proceeding except as explained in the Argument Section of this Motion.

I filed this Motion within a week of discovering that public utilities were planning to raise my rates and have included with the Motion the legal arguments I would present as a party in the Argument Section of this Motion, so parties will be able to fully address my arguments in any subsequent motion or brief.

WHEREFORE, for the reasons stated above, I respectfully request that the CPUC grant this Motion for Party Status filing.

Dated: April 17, 2023

Respectfully submitted,

Alexis K. Wodtke

Alexis K. Wodtke

Retired Attorney

E-mail: dansmarin@gmail.com

(For privacy reasons, I am withholding my telephone number)

ARGUMENT IN SUPPORT OF MOTION TO BE MADE A PARTY TO THIS PROCEEDING

Introduction

The Public Utility Commission's Rules of Practice and Procedure, Rule 11.1(b) says:

A motion may be made at any time during the pendency of a proceeding by any party to the proceeding. A motion may also be made by a person who is not a party if it is accompanied by a motion, pursuant to Rule 1.4, to become a party.

Rule 11.1(d) says:

A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.

The following ARGUMENT is meant to satisfy that requirement.

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ARGUMENT IN SUPPORT OF MOTION FOR PARTY STATUS

I THE COMMISSION MAY NOT LEGALLY CONTINUE THIS PROCEEDING WITHOUT NOTICE TO RESIDENTIAL CUSTOMERS WHO MUST BE GIVEN A REASONABLE OPPORTUNITY TO BE HEARD

A. No Notice Of This Proceeding Was Sent To Residential Customers Who are Directly Affected by the Outcome of this Proceeding..

Ordinarily, when an electric utility applies to directly or indirectly increase rates, it must “furnish to its customers affected by the proposed increase notice of its application” “within 45 days, if the corporation operates on a 30-day billing cycle.” PUC Code § 454; Cal. Code Regs. Tit. 20, §3.2. This case has been designated a ratesetting proceeding¹, but no notice was given to individual residential customers of the proposed rate increases filed by the electric utilities as part of this proceeding.

Section 9 the Assigned Commissioner’s Scoping Memo identifies the people to whom notice of the proceeding may have been given:

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission’s monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission’s website. In addition, the Commission served the Order Instituting Rulemaking on all respondents, all community choice aggregators, and the service lists for the following Commission proceedings: Rulemaking (R.) 18-07-006, R.19-01-011, R.20-11-003, R.21-06-017, Application (A.) 21-12-006 et al., A.20-10-011, A.19-11-019, R.13-09-011, A.17-01-012 et al., R.21-10-002, A.20-10-012, A.22-05-002 et al.

Residential customers are “likely to be affected by” any rates put into effect as a result of this proceeding. No notice of the proceeding was provided to me or other residential customers pursuant to PUC Code section § 454; Cal. Code Regs. Tit. 20, §3.2.

¹ ASSIGNED COMMISSIONER’S PHASE 1 SCOPING MEMO AND RULING issued Nov.2, 2022.

PUC Code § 454 embodies the U.S. Constitution’s prohibition, in the fifth and fourteenth amendment, against depriving any person of life, liberty, or property, without due process of law.² Procedural due process refers to the constitutional requirement that when the federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must be given [notice](#), the opportunity to be heard, and a decision by a neutral decision-maker.³ “[D]ue process of law”, at a minimum, includes “notice of the proposed action and the grounds asserted for it,” and an “opportunity to present reasons why the proposed action should not be taken.”

Residential customers were not made aware of this proceeding until the public utilities posted notice on their individual websites.⁴ The Mercury News picked up the story and published it on April 12, 2023.⁵ The San Diego Tribune ran the story on April 13, 2023 ⁶, as did the San Francisco Chronicle.⁷ These stories were the first notice I had of the utilities’ filings in R.22-07-005. It is unfair and unlawful

² See e.g., https://constitution.congress.gov/browse/essay/amdt14-S1-5-1/ALDE_00013747/

³ https://www.law.cornell.edu/wex/procedural_due_process

⁴ <https://www.pgecurrents.com/articles/3700-pg-e-submits-proposal-lower-electric-bills-low-income-customers-provide-bill-transparency-stability-advance-clean-energy-goals>

⁵ t.ly/VnM_ “PG&E Monthly Bills Could Jump For Many Customers Due To New State Law Customer Monthly Bills Will Include A Fixed Charge Based On Income” (April 10, 2023); <https://energized.edison.com/stories/sce-proposes-bill-relief-for-lower-income-customers> (April 7, 2023); <https://www.sdge.com/rates-and-regulations/proceedings/Demand-Flexibility-OIR> (April 7, 2023)

⁶ <https://www.sandiegouniontribune.com/business/story/2023-04-10/a-fixed-monthly-charge-is-coming-to-your-electric-bill-will-it-make-ca-rates-more-affordable> (April 13, 2023)

⁷ <https://www.sfchronicle.com/bayarea/article/pge-utility-electricity-bills-restructure-plan-17895445.php>

to keep the utilities plans secret from residential customers, and implementation of any rates approved in this proceeding would be constitutionally confiscatory if placed in effect.

B. Residential Customers Must Be Given an Opportunity to Be Heard After Being Given Access to Documents explaining the Grounds Upon Which Increased Rates Will be Charged.

Customers were not provided with easy access to PG&E's testimony explaining the grounds upon which new rates were being designed. I made many efforts to discover where PG&E's testimony could be found on the CPUC and PG&E websites and to get a copy of that testimony.

A search of PG&E's website did not provide a link providing access to that testimony. A call to PG&E's attorney (Gail Slocum) to ask for the testimony was answered by a staff person who told me my call should be answered by the Case Manager (Bobby Silicani) but she did not have a phone number where he could be reached. I emailed PG&E's attorney to ask for the testimony and, in reply, the Case Manager emailed me links to that testimony but the links didn't work.

The Scoping Memo in this proceeding states,

"Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information R.22-07-005 COM/ARD/mef - 13 - at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov."

The PG&E staff person also referred me to the PUC's Public Advisor who painstakingly took me through the process of finding documents in R.22-07-055 only to discover the testimony had not been posted there. She said she would search for the testimony and

later sent an email saying, “PG&E concurrent opening testimony is found through an advanced search of the proceeding - [Joint IOUs-Various-Joint IOU-01-Testimony \(4.7.23\)](#).”

Even if a residential customer had received notice of the utilities’ plans to increase their rate for electric service, they were not made aware of “the grounds asserted” for doing so or an “opportunity to present reasons why the proposed action should not be taken.”

The failure of the utilities to provide notice of the rate increase proposed in R.22-07-005 to residential customers is particularly egregious because it is residential customers, not industrial or commercial customers, who will be required to subsidize low-income customers rates. There are alternatives to imposing that burden on residential customers, an action that is neither reasonable or just. Unfairly burdening residential customers with this cost violates PUC Code §§ 451 and 453(a) & (c)⁸.

II. THERE ARE MANY CONFLICTS BETWEEN CPUC CODE SECTION 739.9 AND, IN PARTICULAR, THE US AND CALIFORNIA CONSTITUTIONS AND CALIFORNIA STATUTES. THESE CONFLICTS MUST BE RESOLVED BEFORE AB 205 CAN BE IMPLEMENTED.

As part of this proceeding, the Public Utilities Commission (Commission) must reconcile the provisions of AB 205 with the Constitutional guarantees in the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7, of the California Constitution, as more fully explained above. This is a necessary predicate to any further action taken by the Commission.

⁸ Under PUC Code § 451, any rates approved by the Commission must be just and reasonable. Under PUC Code §453(a) rates may not provide an advantage, nor may they prejudice or disadvantage, to any corporation or person. Under PUC Code section § 453(c), “No public utility shall establish or maintain any unreasonable difference as to rates, ... as between classes of service.

In order to implement the rates prescribed by PUC Code 739.9 (AB 205) the Commission must determine the method by which income graduated fixed charges can be established without violating California Constitution Art. I, § 1 which guarantees California citizens the right to privacy.

As part of this proceeding, the Commission must also explain why the implementation of CA PUC Code 739.9 (AB 205) is not in conflict with and superseded by other California statutes. PUC Code sections 451 and 453(a) and c) require that rates approved by the Commission must be just and reasonable; prohibit and rate that may provide an advantage to, prejudice or disadvantage, any corporation or person; and that "No public utility shall establish or maintain any unreasonable difference as to rates, ... as between classes of service." PUC Code section 739.6 states: The commission shall establish rates using cost allocation principles that fairly and reasonably assign to different customer classes the costs of providing service to those customer classes, consistent with the policies of affordability and conservation.

III. THE UTILITIES PROPOSE RATES WHICH ARE NOT JUST AND REASONABLE, AND WOULD DISCRIMINATE BETWEEN CUSTOMER CLASSES. THE BEST WAY TO HELP LOW-INCOME RESIDENTIAL CUSTOMERS IS TO REDUCE RATES FOR ALL CUSTOMERS.

A. Costs Of Programs And Policies That Go Beyond The Cost Of Producing And Distributing Electricity, Like The Low-Income Customer Discount, Should Be Eliminated From Rates.

The Public Utilities reference in their testimony the Next 10/Berkeley Haas report titled "Designing Electricity Rates for An Equitable Energy Transition" (2021 Report).⁹ That Report "used historical data from the Joint IOUs to show that the price of electricity in

⁹ *Next 10 and Energy Institute at Haas, Designing Electricity Rates for An Equitable Energy Transition (hereinafter Next 10, 2021 Report), (Feb. 23, 2021), available at <https://www.next10.org/sites/default/files/2021-02/Next10-electricity-rates-v2.pdf>.*

the Joint IOUs' service territories is two to three times higher than the actual cost to produce and distribute the electricity provided, and this results in electricity rates that disproportionately harm lower income electricity customers." The Report suggests that rates could be reduced by "shifting cost recovery of programs and policies to the state budget."

The Commission could allow utility owners to absorb the cost of providing a low-income rate discount, assuming providing low-income rate discounts do not violate section 453(c)'s prohibition against providing any person with an advantage. SDG&E is quoted in a KTLA5 story as saying, "We have listened to and heard from our customers that fundamental change is needed to provide bill relief," SDG&E CEO Caroline Winn said [in a statement](#). "When we were putting together the reform proposal, front and center in our mind were customers who live paycheck to paycheck, who struggle to pay for essentials such as energy, housing and food."¹⁰ If SDG&E and other utilities are, in fact, concerned about low-income customers, the companies' shareholders could absorb the cost of discounting low-income customer rates.

As the Public Utilities point out in their Joint Testimony, rates that are significantly higher than the actual cost of providing that electricity do not encourage customers to switch from carbon-based fuels to electricity for their energy needs.

"Widespread electrification of customer homes and vehicles will be critical in accelerating the pace of decarbonization. ... Customer adoption of beneficial electrification technologies is essential to effectively reduce the greenhouse gas emissions currently associated with these two sectors. ... As California looks to encourage customers to efficiently use more electricity, volumetric rates that are significantly higher than the actual cost of providing that electricity create an economic disincentive for the adoption of electrification technologies."¹¹

¹⁰ <https://ktla.com/news/local-news/california-power-companies-roll-out-fixed-rate-bill-proposal/>

¹¹ *Joint Testimony of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (the Joint IOUs) Describing Income-Graduated Fixed Charge Proposals*, pp. 11-12.

Reducing rates would help California reduce greenhouse gases. Money saved as a result of the reduced rates could be used to buy electric cars, change out gas systems in their homes to electric heat and air-conditioning, install smart thermostats, and other energy saving measures. Cal PUC Code § 739.9(2) states rates changed by this proceeding should “[n]ot unreasonably impair incentives for conservation, energy efficiency, and beneficial electrification and greenhouse gas emissions reduction.”

B. It Is Unjust And Unreasonable To Make Residential Customers Subsidize The +/- 30% Discount. That Subsidy Should Be Charged To All Customers, Including Commercial And Industrial Customers.

(1). Rates Should Be Reduced By “Shifting Cost Recovery Of Programs And Policies To The State Budget.”¹²

The provision of a social benefit, like the 30% discount of low-income customer rates required by AB-205, is one of those costs which should be provided through taxes; it is not a cost of providing electricity to be charged to other customers. Other social programs benefiting low-income people – Medicaid, Supplemental Nutrition Assistance Program, Children's Health Insurance Program, Temporary Assistance for Needy Families, housing assistance – are financially supported through taxes. It is the Legislature's responsibility to impose taxes. That is because the legislature is democratically elected and legislators can be replaced if they impose unreasonable taxes. “[A]ny change in state taxes for the purposes of increasing revenues must be passed by a two-thirds vote of each house of the Legislature (Article XIII A, Section 3).

¹² *Next 10 and Energy Institute at Haas, supra*, at 32.

It is the Commission's responsibility to "fix rates."¹³ The Commission's fixing of rates does not include the power to tax.¹⁴ If it did, the state could circumvent the Constitutional provisions concerning the budget process and take away the ability of citizens, through their representatives, to vote on the budget.¹⁵

(2) There Is No Reasonable Basis For Differentiating Between Classes Of Customers Who Should Pay For Social Benefits Through Rates.

California rates are based on utility cost. Section 739.6 states:

The commission shall establish rates using cost allocation principles that fairly and reasonably assign to different customer classes the costs of providing service to those customer classes, consistent with the policies of affordability and conservation

"General Rate Cases" are proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. The CPUC reviews detailed cost data for various areas of utility operations and approves a budget for the first year – called a test year – of the GRC cycle. ... The revenue is allocated to each class based on the costs the utility incurs when serving that class." ¹⁶

Providing a discount to low-income customers is not a cost of "operating and maintaining the utility system." If the Commission has authority to discount rates of low-income customers, the cost of providing that social benefit should be paid for by taxes. At the very

¹³ California Constitution Art. XII, section 4

¹⁴ https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/publications/Chapter_1C.pdf

¹⁵ Cal. Const. Art.4, Section 12.

¹⁶ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-rates/general-rate-case-grc-phase-ii>

least, the cost of providing that benefit should be borne equally by all customer classes so that Commercial and Industrial customers share the burden of providing this social benefit.

(3) It Is Inequitable And Discriminatory To Make Some Residential Customers Pay More Than Other Residential Customers Who Are Not Low-Income.

Section 14 of AB-205 states that “[i]n regards to Section 739.9 of the Public Utilities Code, as amended by this act, it is the intent of the Legislature to ... [a]uthorize the Public Utilities Commission to establish reasonable fixed charges on default residential customer rates to help stabilize rates and equitably allocate and recover costs among residential customers in each electrical corporation’s service territory.” There is no reasonable, cost-based basis for imposing an income graduated fixed charge in rates paid by Residential customers. CA PUC Code 739.9(e)(1). The Next10 Report states that “[h]igher-income households now consume only modestly more electricity than lower-income households.” Thus the cost of serving residential customers is not appreciably greater between residential classes.

AB-205 states that income graduated fixed charges should be developed “so that a low-income ratepayer in each baseline territory would realize a lower average monthly bill without making any changes in usage.” Creating differentiated rates is not necessary to lower the rates of low-income customers since low income customers’ rates are discounted by the designated +/- 30% discount.

It appears that in creating the differentiated rate structure, the Legislature may have been influenced by the Haas Institute Report’s findings that California Public Utility rates are designed to recover many costs beyond the direct incremental cost of providing electricity.” As a result, “lower-income households pay a higher percent of residual costs as a fraction of their annual income on average,

so much so that the effective electricity tax is more regressive than the state sales tax.¹⁷ Any rate charged by a utility is inevitably going to comprise a larger fraction of low-income customer's household costs than that of higher-income customers. The situation could be alleviated by removing from rates any costs unrelated to providing electricity so that residential customers do not have to pay them. It is unreasonable and unjust to make some residential customers pay more than others simply because non-utility costs take a larger bite out of the earned income of customers who are not low-income.

IV INFORMATION NEEDED TO CREATE INCOME GRADUATED FIXED CHARGES FOR RESIDENTIAL CUSTOMERS IS PRIVATE AND CAN NOT BE USED BY THE PUC UNLESS VOLUNTARILY PROVIDED.

There are a lot of problems created by the concept of creating income graduated fixed charges for residential customers. In the first place, there is no reasonable basis for requiring some residential customers to pay more than others. Second, rates are fixed based on the cost of providing service to customers, not on customers' ability to pay. Perhaps the latter criterion might be considered when imposing taxes but not when setting rates. A third cause for concern is the problem of determining which individual residential customers fall into which category of income.

The Joint Utilities Testimony highlights the issue of how customer income data will be discovered. They point out that programs like CARE and FERA, which provide discounts to low-income customers, are "opt-in programs and eligible customers voluntarily give the IOUs information regarding income."¹⁸ Residential customers in higher tiers are not going to be willing to voluntarily give the IOU's

¹⁷ . *Paying for Electricity in California: How Residential Rate Design Impacts Equity and Electrification*, Pages 3, 4. <https://www.next10.org/sites/default/files/2022-09/Next10-paying-for-electricity-final-comp.pdf>

¹⁸ *Joint Testimony of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (the Joint IOUs) Describing Income-Graduated Fixed Charge Proposals*, at page 18.

information regarding income, particularly since there is no benefit, only higher rates.. In fact, personal income information is protected against disclosure by the California Constitution.

“The California right to privacy was enacted by ballot measure in November 1972. ... According to the ballot pamphlet supporting its passage, the predominant purpose was to guard against unnecessary governmental surveillance and collection of records.”¹⁹ Cal.

Const. Art. I, § 1 states:

“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy”

The Joint Utilities propose that a state agency should collect the information necessary to create income brackets. They say, “a state agency, potentially with the assistance of a Third-Party administrator, would be best situated to take on the complex income verification and bracket assignment work that will be necessary to implement the IGFC”²⁰. That state agency would be violating residential customers’ constitutional privacy rights if it were to require them to provide income information.

In their Joint Testimony the IOUs say, “ the Joint IOUs propose that the income verification process (including the initial Income Bracket placement, customer appeal process, and periodic updates to income bracket assignment) is conducted by a Third Party under the supervision of the CPUC, using a data model that has access to Franchise Tax Board (FTB), Department of Social Services (DSS), and census block data to place customer households in the correct Income Bracket.” No data model can be developed with access to private information held by these agencies. Data gathered by these agencies is confidential and residential customers have a right to

¹⁹ *California’s Constitutional right to privacy* (footnotes omitted)

<https://medium.com/golden-data/the-californias-constitutional-right-to-privacy-4a1900d11ee8>

²⁰ *Joint Testimony of IOUs at page 19.*

object to release of their personal information. The Franchise Tax Board considers all personal information provided to them private and confidential.²¹ Information held by the DSS is considered confidential.²² The Census Bureau has taken steps to “protect the confidentiality of the information that we collect when individuals respond to surveys and censuses.”²³

Even if any of the agencies mentioned by the IOUs or any other state agency could provide necessary data to create income graduated fixed rates, they could not help the Commission fix rates. That power is delegated exclusively to the PUC.

WHEREFORE, the undersigned Residential Customer respectfully asks the Commission to grant her party status so these arguments are presented to and addressed by the Commission.

Respectfully submitted,

Alexis K. Wodtke

Alexis K. Wodtke
Retired Attorney

E-mail: dansmarin@gmail.com

(For privacy reasons, I am withholding my telephone number)

²¹ Franchise Tax Board Privacy and Policy Statement, <https://www.ftb.ca.gov/your-rights/privacy/index.html>; Procedures Manual, Map 2. <https://www.ftb.ca.gov/tax-pros/procedures/manual-of-audit-procedures/chapter-2.pdf>

²² <https://www.cdss.ca.gov/ord/entres/getinfo/pdf/1cfcman.pdf>

²³ <https://www.census.gov/content/dam/Census/library/factsheets/2021/protecting-the-confidentiality-of-the-2020-census-redistricting-data.pdf>

